

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 MICHAEL A. SHEKEY,
Deputy Attorney General
3 300 South Spring Street, Suite 500
Los Angeles, California 90013
4 Telephone: (213) 897-2520

5 Attorneys for Complainant

6
7 BEFORE THE
BOARD OF ACCOUNTANCY
8 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
9

10 In the Matter of the Accusation) NO. AC-96-1
Against:)
11) DEFAULT DECISION AND
DAVID E. CATES,) ORDER
12)
Respondent.)
13)

14 On February 13, 1996, an Accusation was filed by Carol
15 B. Sigmann, Executive Officer (hereinafter referred to as the
16 "Complainant") before the Board of Accountancy (hereinafter
17 referred to as the "Board") of the Department of Consumer Affairs
18 of the State of California, against David E. Cates (hereinafter
19 referred to as the "Respondent"), holder of Certificate Number
20 18902.

21 On February 28, 1996, the Accusation, along with the
22 Statement to Respondent, Request for Discovery, Notice of
23 Defense, and California Government Code, sections 11507.5,
24 11507.6, and 11507.7 ((hereinafter referred to as the "Accusation
25 Package") was served on Respondent by certified mail, addressed
26 to Respondent at 3408 Centralia, Lakewood, California 90712.
27 Thereafter, the accompanying "Domestic Return Receipt" card,

1 which was signed by Respondent on the identified date of delivery
2 of February 29, 1996, was returned to the Office of the Attorney
3 General.

4 Respondent was served with the Accusation Package on
5 February 28, 1996, in a manner authorized by California
6 Government Code section 11505(c) and California Code of Civil
7 Procedure, section 11, and acknowledged receipt of same on
8 February 29, 1996. Respondent has failed to file a Notice of
9 Defense as permitted by California Government Code, section
10 11506(a), and has otherwise failed to request a hearing, object
11 or otherwise contest the Accusation. Respondent has waived his
12 right to a hearing on the Accusation and is in default. As a
13 result of Respondent's waiver and pursuant to California
14 Government Code, section 11520(a), the Board takes action on the
15 Accusation without hearing based upon the Accusation and
16 documentary evidence on file, and makes the following findings of
17 fact and determination of issues.

18 FINDINGS OF FACT

19 1. Complainant, Carol B. Sigmann, Executive Officer of
20 the Board of Accountancy, made and filed the subject Accusation
21 in the above-entitled matter solely in her official capacity. A
22 true and correct copy of the subject February 13, 1996 Accusation
23 is attached hereto as Exhibit "A".

24 2. On or about June 22, 1973, Certificate Number 18902
25 was issued by the Board to the Respondent. Said Certificate
26 expired on July 1, 1994 due to non-payment of the requisite
27 renewal fee and for failure to submit documented evidence of

1 compliance with requisite continuing education regulations. Said
2 Certificate is not currently in force and effect.

3 3. In or about February 1994 Respondent failed to
4 return client records, despite repeated requests by Respondent's
5 clients Raymond Cooper, Jr. of Cooper's Hardware, Inc. and Lisa
6 Adamson of FLAMECO. Respondent ultimately returned the
7 aforementioned client records only after said records were
8 subpoenaed by the Board's Division of Investigation (DOI).

9 4. Respondent had improperly been practicing
10 accountancy with an expired Certificate since July 1, 1994, and
11 as of the date of the filed Accusation, had not taken appropriate
12 action to renew said Certificate.

13 5. Respondent improperly maintained an office for the
14 transaction of business as a public accountant subsequent to
15 July 1, 1994, without holding a valid Certificate. Said
16 Certificate to practice public accountancy had expired on July 1,
17 1994, without since being renewed.

18 6. Respondent improperly assumed and used the title
19 and designation of "Certified Public Accountant" and used the
20 abbreviation of "CPA" while practicing public accountancy without
21 holding a valid Certificate, as a result of Respondent's
22 Certificate to practice public accountancy having previously
23 expired on July 1, 1994, without subsequent renewal to date.

24 7. Respondent improperly and personally engaged within
25 the state in the practice of public accountancy and in the
26 capacity of a partner with the partnership practice identified as
27 "Abas, Cates & Company, Certified Public Accountants" without

1 possessing a valid permit to practice public accountancy, as a
2 result of Respondent's Certificate to practice public accountancy
3 having previously expired on July 1, 1994, without subsequent
4 renewal to date.

5 DETERMINATION OF ISSUES

6 1. As a result of the above Findings of Fact, cause
7 for disciplinary action against Respondent exists for violating
8 related sections of the California Business and Professions Code
9 and California Code of Regulations, Title 16, as specifically
10 identified in the subject Accusation (Exhibit "A").

11 2. Cause for discipline exists on the grounds that
12 Respondent improperly engaged in the practice of public
13 accountancy and engaged in unprofessional conduct by reason of
14 Findings of Fact Numbers 3, 4, 5, 6, and 7.

15 DISCIPLINARY ORDER

16 WHEREFORE, IT IS ORDERED:

17 Accountancy Certificate Number 18902 issued to David E.
18 Cates is hereby revoked.

19 Respondent shall not be deprived of making any showing
20 by way of mitigation; however, such showing shall be made to the
21 Board prior to the effective date of this Default Decision.

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This Default Decision shall become effective on _____

June 17, 1996

DATED: May 17, 1996

Rosa J. Smith

President
Board of Accountancy
Department of Consumer Affairs
State of California

A:\Cates.Def

EXHIBIT "A"

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 MICHAEL A. SHEKEY, State Bar # 143436
Deputy Attorney General
3 300 South Spring Street, 10 North
Los Angeles, California 90013
4 Telephone: (213) 897-2520

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7 BEFORE THE
8 BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
9 STATE OF CALIFORNIA

10

11 In the Matter of the Accusation)	NO. AC-96-1
Against:)	
12 DAVID E. CATES)	ACCUSATION
13 3408 Centralia)	
14 Lakewood, CA 90712)	
15 Certificate No. 18902,)	
16 Respondent.)	
)	

17

18 COMPLAINANT, Carol B. Sigmann, as cause for
19 disciplinary action, alleges:

20 1. Complainant Carol B. Sigmann ("Complainant") is
21 the Executive Officer of the California State Board of Accounting
22 ("Board") and makes and files this Accusation solely in her
23 official capacity.

24 LICENSE STATUS

25 2. On or about June 22, 1973, Certificate Number
26 18902 was issued by the Board to David E. Cates. Said
27 Certificate expired on July 1, 1994 due to nonpayment of the

1 requisite renewal fee and for failure to submit documented
2 evidence of compliance with the requisite continuing education
3 regulations. Said Certificate is not currently in force and
4 effect.

5 STATUTES

6 3. This Accusation is made in reference to the
7 following statutes of the California Business and Professions
8 Code ("Code"):

9 a. Code Section 5037, in pertinent part, provides the
10 following:

11 "All statements, records, schedules, working
12 papers . . . except for records which are
13 part of the client records, shall be and
14 remain the property of the licensee"
15 [Emphasis added.]

16 b. Code section 5050, in pertinent part, provides the
17 following:

18 "No person shall engage in the practice of
19 public accountancy in this State unless such
20 person is the holder of a valid permit to
21 practice public accounting issued by
22 the board;"

23 c. Code section 5051(b), in pertinent part, provides
24 the following:

25 "Except as provided in Sections 5052, 5053,
26 and 5054, a person shall be deemed to be
27 engaged in the practice of public accountancy

1 within the meaning and intent of this chapter
2 if he or she does any of the following:

3 * * *

4 (b) Maintains an office for the transaction
5 of business as a public accountant."

6 d. Code section 5055, in pertinent part, provides the
7 following:

8 "Any person who has received from the board a
9 certificate of certified public accountant
10 and holds a valid permit to practice under
11 the provisions of this chapter shall be
12 styled and known as a "certified public
13 accountant" and may also use the abbreviation
14 'C.P.A.' No other person, . . . shall assume
15 or use that title, designation or
16 abbreviation or any other title, designation,
17 sign, card, or device tending to indicate
18 that the person using it is a certified
19 public accountant."

20 e. Code section 5072(b), in pertinent part, provides
21 the following:

22 " A partnership engaged in this state in the
23 practice of public accountancy may register
24 with the board as a partnership of certified
25 public accountants provided it meets the
26 following requirements:

27 * * *

(b) Each partner personally engaged within this state in the practice of public accountancy must be a licensee in good standing of this state . . . "

f. Code section 5100(f), in pertinent part, provides the following:

"After notice and hearing the board may revoke, suspend or refuse to renew any permit. . .or may censure. . .for unprofessional conduct which includes. . .

* * *

(f) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter."

REGULATIONS

4. This Accusation is made in reference to the following sections of the California Code of Regulations, Title 16 ("Regulations"):

a. Regulations section 68, in pertinent part, provides the following:

"A licensee of the board, after demand by or on behalf of a client, for books, records or other data, whether in written or machine sensible form, that are the client's records shall not retain such records. Unpaid fees do not constitute justification for retention

1 of client records."

2 b. Regulations section 87(a) in pertinent part,
3 provides the following:

4 "(a) 80 Hours.

5 A licensee shall not engage in
6 public practice. . .in California,
7 unless during the two-year period
8 immediately preceding permit
9 renewal the licensee has completed
10 at least 80 hours of qualifying
11 continuing education and submitted
12 the statement required by Section
13 89. No carryover is permitted from
14 one two-year period to another."

15 c. Regulation section 89 provides the following:

16 "(a) An applicant must provide a signed
17 statement, under penalty of perjury, that all
18 applicable continuing education requirements
19 have been met.

20 (b) All licensees shall maintain their
21 records confirming attendance at and
22 completion of continuing education, including
23 the following information:

- 24 (1) School, firm or organization conducting course
25 (2) Location of course
26 (3) Title of course or description of content
27 (4) Dates

- 1 (5) Hours claimed
- 2 (6) Evidence of Completion
- 3 (7) If credit for published articles and books is
- 4 claimed the following information must be maintained:
- 5 (A) Publisher
- 6 (B) Title of publication
- 7 (C) Description of content
- 8 (D) Dates of publication
- 9 (E) Hours claimed

10 (c) The committee on continuing education will
11 verify such information on a test basis. Records
12 confirming attendance and completion of continuing
13 education (all information requested in subsection (B),
14 above) must be maintained by each licensee for a period
15 of 4 years after each renewal. Evidence of completion
16 shall take the form of certificates of completion,
17 attendance records, examination, transcripts, or other
18 such independently verifiable evidence acceptable to
19 the Board.

20 (d) A licensee's willful making of any false or
21 misleading statement, in writing, regarding his or her
22 continuing education shall constitute cause for
23 disciplinary action pursuant to section 5100(f) of the
24 Accountancy Act."

25 d. Regulation section 94, in pertinent part, provides
26 the following:

27 "Failure to comply with these continuing

1 education rules by a licensee engaged in
2 public practice, . . . constitutes cause for
3 disciplinary action under Section 5100."

4 I.

5 5. Respondent has subjected his Certificate to
6 discipline under California Business and Professions Code,
7 section 5037, on the ground that despite numerous requests by
8 clients Raymond Cooper, Jr. of Cooper's Hardware, Inc. in or
9 about February 1994 and Lisa Adamson of FLAMECO in or about April
10 1993, together with Ms. Adamson's attorney, Respondent failed to
11 return client records, until such time that said records were
12 ultimately subpoenaed by the Board's Division of Investigation
13 ("DOI").

14 II.

15 6. Respondent has subjected his Certificate to
16 discipline under California Business and Professions Code,
17 section 5050, on the ground that Respondent had improperly been
18 practicing public accountancy with an expired permit since
19 July 1, 1994 and, to date, has not taken appropriate action to
20 renew said certificate.

21 III.

22 7. Respondent has subjected his Certificate to
23 discipline under California Business and Professions Code,
24 section 5051(b), on the ground that Respondent improperly
25 maintained an office for the transaction of business as a public
26 accountant subsequent to July 1, 1994, without holding a valid
27 license. Said permit to practice public accountancy had expired

1 on July, 1994, without since being renewed.

2 IV.

3 8. Respondent has subjected his Certificate to
4 discipline under California Business and Professions Code,
5 section 5055, on the ground that Respondent improperly assumed
6 and used the title and designation of "Certified Public
7 Accountant" and used the abbreviation of "C.P.A." while
8 practicing public accountancy without holding a valid license, as
9 result of Respondent's permit to practice public accountancy
10 having expired on July 1, 1994, without subsequent renewal to
11 date.

12 V.

13 9. Respondent has subjected his Certificate to
14 discipline under California Business and Professions Code,
15 section 5072(b), on the ground that Respondent improperly and
16 personally engaged within the state in the practice of public
17 accountancy and in the capacity of a partner with the partnership
18 practice identified as "Abas, Cates & Company Certified Public
19 Accountants," without possessing a valid permit to practice
20 public accountancy, as a result of Respondent's permit to
21 practice public accountancy having expired on July 1, 1994,
22 without subsequent renewal to date.

23 VI.

24 10. Respondent has subjected his Certificate to
25 discipline under California Business and Professions Code,
26 sections 5100(f), on the ground that Respondent engaged in
27 unprofessional conduct as delineated in the aforementioned

1 paragraphs 5, 6, 7, 8, and 9, and as a consequence thereof, has
2 subjected his permit to discipline including, but not limited to,
3 revocation, suspension, refusal of renewal request, or censure.

4 VII.

5 11. Respondent has subjected his Certificate to
6 discipline under Section 68 of the California Code of
7 Regulations, Title 16, on the ground that Respondent failed to
8 comply with the demand for client records as delineated within
9 paragraph 5 above.

10 VIII.

11 12. Respondent has subjected his Certificate to
12 discipline under Section 87(a) of the California Code of
13 Regulations, Title 16, on the ground that Respondent failed to
14 provide evidence of continuing education hours, after a formal
15 request, and having previously certified on his most recent
16 renewal application, under penalty of perjury, that he had
17 completed the requisite 80 hours of continuing education.

18 IX.

19 13. Respondent has subjected his Certificate to
20 discipline under Section 89 of the California Code of Regulation,
21 Title 16, on the ground that Respondent failed to maintain
22 documented evidence which would confirm attendance and completion
23 of qualifying continuing education for the requisite period of
24 time.

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26

27

X.

14. Respondent has subjected his Certificate to discipline under Section 94 of the California Code of Regulations, Title 16, on the ground that Respondent failed to comply with the continuing education rules as delineated in paragraphs 11, 12 and 13 above, thereby subjecting his permit to disciplinary action under California Business and Professions Code, section 5100.

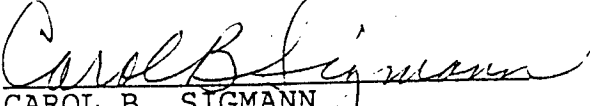
15. As a result of the circumstances described in paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14, Respondent is subject to discipline under Code sections 5037, 5050, 5051(b), 5055, 5072(b), 5100(f), and under Regulations sections 68, 87(a), 89, and 94, including, but not limited to, revocation, suspension, refusal of renewal request, or censure.

WHEREFORE, Complainant prays that a hearing be held on the matters alleged herein, and that following said hearing, a decision be issued:

1. Revoking, suspending, censuring or refusing to renew Certificate Number 18902, heretofore issued to Respondent David E. Cates; and

2. Taking such other and further action as the Board deems proper.

DATED: February 13, 1996


CAROL B. SIGMANN
Executive Officer
Board of Accountancy
Department of Consumer Affairs
State of California